

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
M.B. and M.B., persons under	)	(Not For Official Publication)
eighteen years of age.	)	
_____	)	Case No. 20050587-CA
	)	
J.D.,	)	F I L E D
	)	(November 3, 2005)
Appellant,	)	
	)	2005 UT App 469
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

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Third District Juvenile, Salt Lake Department, 447125  
The Honorable Charles D. Behrens

Attorneys: Justin Kent Roberts, Murray, for Appellant  
Mark L. Shurtleff and John M. Peterson, Salt Lake  
City, for Appellee

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Before Judges Davis, McHugh, and Orme.

PER CURIAM:

J.D. (Mother) appeals the termination of her parental rights in M.B. and M.B. Mother challenges the sufficiency of the evidence supporting the juvenile court's findings in general, and specifically the finding that Mother failed to show the normal interest of a parent in her children and made only token efforts to communicate with them.

A juvenile court's findings of fact will not be overturned unless they are clearly erroneous. See In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680. A finding of fact is clearly erroneous only when, in light of the evidence supporting the finding, it is against the clear weight of the evidence. See id. Additionally, a juvenile court has broad discretion regarding judgments, based on the juvenile court's specialized experience and training, as

well as the ability to judge credibility firsthand. See id. In reviewing an order terminating parental rights, this court "will not disturb the juvenile court's findings and conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re R.A.J., 1999 UT App 329, ¶6, 991 P.2d 1118.

There is ample evidence in the record supporting the juvenile court's findings that Mother failed to show the normal interest of a parent in her children and made only token efforts to communicate with them. In fact, the record establishes that Mother had no contact with her children for more than six months. After a single visit in July 2004, Mother did not visit, write, call, send gifts, or communicate in any way with her children. Neither did she maintain contact with the Division of Child and Family Services regarding how her children were doing until about February 2005. Although Mother offers excuses for her lack of communication, we defer to the juvenile court's credibility determinations. See In re E.R., 2001 UT App 66 at ¶11. The clear weight of the evidence supports the juvenile court's findings, and thus, they were not clearly erroneous.

Mother implies in her petition that her failure to communicate should be excused by her incarceration in Idaho from the end of November 2004 to mid-January 2005. However, this court has noted that incarceration is "not a complete excuse for the parent's failure to communicate with his or her children." In re M.C., 940 P.2d 1229, 1234 (Utah Ct. App. 1997). Prisoners have some, albeit limited, opportunities to write or otherwise communicate with the outside world. See id. As a result, incarceration will excuse a parent from contacting children "only to the extent the parent is precluded, by directive or by circumstances, from maintaining contact during the period of incarceration." Id. at 1235.

Mother's incarceration does not explain her complete failure to contact her children for more than six months. Her incarceration was only for a portion of the time frame during which there was no contact. Further, there is nothing in the record indicating that Mother was precluded from contacting her children during her incarceration. Thus, her incarceration does not excuse her failure to communicate with her children.

A review of the record establishes that the remaining findings of the juvenile court are also supported by record evidence and are not clearly erroneous. The evidence established that Mother failed to communicate with her children in any way for at least six months and failed to show the normal interest of a parent. This is prima facie evidence of abandonment. See Utah Code Ann. § 78-3a-408(1)(b)-(c) (2002 & Supp. 2005) (providing

that lack of communication for six months and failure to show normal interest is prima facie evidence of abandonment). The juvenile court had sufficient evidence of abandonment, and thus, properly terminated Mother's parental rights based on abandonment. See id. § 78-3a-407(1)(a) (2002 & Supp. 2005) (providing abandonment as ground for termination of parental rights).

Accordingly, the termination of Mother's parental rights is affirmed.

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge